



Town of Tyngsborough
 Zoning Board of Appeals
 Town Hall-25 Bryants Lane
 Tyngsborough, Ma 01879-1003
 (978) 649-2300, Ext. 112

APPROVED

Board of Appeals Meeting Minutes for March 10, 2011

Members present: Robb Kydd, Chairman, Chris Mechalides, Vice Chairman, Cheryl Bradley, Claire Cloutier, Joseph Polin, Scott Bordeleau and Donna McPartlan, Administrative Assistant

6:50PM: Meeting called to order by Chairman Robb Kydd

1st Hearing: Robert Lord – 15 Davis St.: Assessors Map 26A, Lot 167; request a Variance of Section 2.12.50 of the Zoning By-Law for ANR subdivision to create buildable Lot 2. Lot 1 requires 7,160 sq. ft. square footage variance; Lot 1 requires 14.4 foot side yard set back variance; Lot 2 requires 6,863 sq. ft. square footage variance in an R-2 Zone. *Planning Board approved ANR plan on 1/6/11
Advertised in the Lowell Sun on Thursday, February 24, 2011 and Thursday, March 3, 2011.

Members hearing and voting on first hearing Robb Kydd, Claire Cloutier, Cheryl Bradley, Joe Polin and Scott Bordeleau.

Motion to waive abutters list. No abutters were present for or against the applicant.

The applicant, Robert Lord was represented by Attorney Peter Nicosia.

In 1993 there were 3 lots in question. Predecessor in Title originally went to Zoning Board of Appeals and acquired approvals to shift lot lines around. Subdivision plan was never approved by the Planning Board and never recorded at Registry of Deeds. Since that time, Robert Lord has taken Title to the property. In September 2010, the applicant presented a plan to create a buildable lot for a single family dwelling from the Zoning Board of Appeals. At that time, applicant thought the prior plan had been approved and were shifting lot lines in accordance from that plan and since have discovered that the Planning Board never approved and it was not recorded at Registry of Deeds. Applicant was denied a Variance at that time due to the concern that an approval would create a lot. Since then they went before to the Planning Board to get approval on ANR subdivision (Approval Not Required, lot has appropriate frontage with other dimensional deficiencies) which was approved with conditions that applicant go before ZBA to address the lot non-conformities that exist in connection with the subdivision. With the

re-shifted lot line and ANR approval and recognition that 1993 was never approved or recorded, they are applying for square footage variance on both lots to address non-conformity on both lots as well as shift in the lot line affecting side yard setback as it's close to the Davis Street line. The applicant modified what they were looking for in September and received Planning Board approval to try to get a buildable lot out of Lot 2 and there is debate whether the applicant will put up a new house for himself to move into something more manageable as they advance in years and sell existing house to use proceeds for "nest egg", moving forward. Attorney Nicosia had 3 plans showing past, proposed (9/2010) and new proposed (with approval by Planning Board) to show progression. The Board reviewed plans, there was discussion of Planning Boards focus being ANR, looking for frontage in creating the lot lines in the designation of lots, but not establishing buildable lots which is required by ZBA to address non-conformities.

Joe Polin read the paragraph from 1993, stating that the Board of Appeals following a public hearing in 1993 voted unanimously to allow a reconfiguration of Lot C, to consist of approximately 11,738 sq feet; and Lot A to consist of approximately 25,900. The vote does not create a buildable lot (Lot B) which is without prejudice at that time. Discussion continues about 25,000 being the amount that the applicant owns and wants to split now. These conjoined in 1987 and that's why the applicant went before the Planning Board first to separate them hoping to avoid a merger debate. The Planning Board unmerged 2 parcels, creating the lot with the current frontage; they didn't say it was buildable, so the request is for ZBA is to make it buildable.

Comments received by the Building Commissioner: The new building will need to meet the "Stretch Code" requirements. The Board of Health comments indicate that the applicant must connect to Municipal Sewer. Conservation had no comment.

Robb Kydd wants clarification on hardship. Attorney Nicosia explains it's the original configuration of the lots where it used to be one large parcel with multiple non-conforming dwellings. The existence of multiple dwellings on a preexisting non-conforming lot which they are seeking to now divide it up that ultimately results in not being the case. The original configuration of the lots and the allowance of the Municipality of having 2 structures created on one lot as being the original hardship.

Scott Bordeleau is concerned about the Board creating another non-conforming lot, and also the reconfiguration of the Plot Plan to get the 75 feet of frontage therefore bringing the existing house on Lot 1 is 5.6 feet to the lot line.

Attorney Nicosia requests the Board look at the integrity of the zoning district and what a resulted lot would do to the nature and character of the surrounding neighborhood. Most of the lots are smaller than the one that is being created. Attorney Nicosia suggests that the Board would be creating a lot that would be the least non-conforming in the area.

Attorney Nicosia clarifies that if the lot was devised prior the adoption of new zoning regulations with stricter dimensional requirements, if the lot was conforming at the time, before that new dimensional requirements was adopted, and then the requirements change you have to maintain separate ownership of the conjoining lots through the entire time period up until the time that you seek relief is called 'checker boarding'. If you don't, there is merger. That's what happened here, there was a merger for A & B. The only way to unmerge is to go to the Planning Board and get full subdivision approval (without required frontage) or ANR approval under the ANR statute if you have frontage, and they did get the approval and that eliminates merger. It is a legitimate lot, not buildable, needs a variance to build upon it. If they go to the Registry of Deeds and record the plan and we have 2 lots, we just can't do anything with lot 2 (a legally defined and approved lot). Lot 1 requires a 7,160 sq foot variance; Lot 2 requires a 6,863 sq ft variance. The only other dimensional non-conformity would be on Lot 1 with the side yard setback 14.4 feet where the corner of the house meets the line going towards Davis St. In all other respects, both lots would conform to today's Zoning By-Laws.

Motion to close public portion of the meeting by, Claire Seconded by Polin; Vote Aye; Motion carries.

Claire Cloutier is concerned about setting precedence for building on a non-conforming lot. Scott Bordeleau doesn't see the hardship.

Board members continue discussion.

Motion to **DENY** by Scott Bordeleau, Seconded by Claire Cloutier

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordelau	AYE

5-0, Motion Carries – DENIED

Other Business

8:00PM: Motion made to adjourn by Robb Kydd, second by Scott Bordeleau

AYE – Unanimous

Meeting adjourned at 8:00PM